



# REAL PROPERTY MANAGEMENT DIVISION

## BULLETIN # 30

December 8, 2011

Subject: Consideration of Existing Federal Facilities

Category: Lease Acquisition

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### Overview

This Bulletin provides information on procedures to be used to ensure that RPMD fully considers and documents its review of existing federally-owned or controlled facilities prior to seeking a leased location.

### Background

When procuring space, Realty Specialists are required to consider whether federally-controlled space (owned or leased) is available that could meet the Government's requirements. Title 41 of the Code of Federal Regulations (CFR) 102-73.10 states that "When seeking to acquire space, Federal agencies should first seek space in Government-owned and Government-leased buildings. If suitable Government-controlled space is unavailable, Federal agencies must acquire real estate and related services in an efficient and cost effective manner."

41 CFR 102-73.45 states: "Federal agencies may consider leases of privately owned land and buildings only when needs cannot be met satisfactorily in Government-controlled space and one or more of the following conditions exist:

- (a) Leasing is more advantageous to the Government than constructing a new building, or more advantageous than altering an existing Federal building.
- (b) New construction or alteration is unwarranted because demand for space in the community is insufficient, or is indefinite in scope or duration.
- (c) Federal agencies cannot provide for the completion of a new building within a reasonable time."

### Real Property Management Division Process

The NOAA line/staff office requesting the lease ("the requesting office") will provide RPMD with the delineated area for its space requirement based on mission-based needs. Once RPMD receives the space requirements information (including all RPMD required forms and the delineated area) from the requesting office, RPMD shall use the following process to ensure that

federally-owned or controlled space is considered. Federally-owned or controlled property includes any relevant property in the NOAA inventory.

For all requests for leased space, the DOC/NOAA real property inventory must be checked prior to checking the broader Federally-owned or controlled real property inventory. In turn, these real property inventories must be checked prior to initiating any lease acquisition.

- NOAA Procurement Under the SLAT<sup>1</sup>: For procurements under the Simplified Lease Acquisition Threshold (SLAT), the Realty Specialist shall be responsible for verifying and documenting that there is no federally-owned or leased space capable of accommodating NOAA's space need. This may be accomplished through electronic or telephonic contact with GSA or by other appropriate means (for example if the Realty Specialist verifies that there are no spaces within the delineated area listed on GSA's inventory of owned and leased facilities or the facility needed is not one that GSA would own or lease such as tower space for an antenna; land with no related office building structure). The Realty Specialist is responsible for documenting this verification in the lease file.
- NOAA Procurements Greater than or Equal to the SLAT: For procurements where NOAA is the procuring agency and the estimated annual rent is greater than or equal to the Simplified Lease Acquisition Threshold<sup>1</sup>, the Realty Specialist shall transmit a letter from the Region Chief or Director RPMD to an appropriate GSA Public Buildings Service regional official<sup>2</sup> describing the procurement requirements and requesting notification of any available federally-owned or leased space that could meet those requirements. GSA should be requested to respond in writing to such requests. The Realty Specialist shall also contact the relevant U.S. Postal Service authority if the U.S. Postal Service could potentially have space that could accommodate NOAA's needs;<sup>3</sup>

While GSA does not require that NOAA check with other Federal agencies to determine if they have available federally-owned or leased space<sup>4</sup>, as a best practice, if the space sought is other than standard office space the NOAA Realty Specialist shall make a good faith effort to determine if there are any other Federal agencies that could be expected to have facilities in the delineated area that may have space available to accommodate NOAA's space needs. If Federal agencies are identified, the Realty Specialist shall transmit a letter from the Region Chief or Director RPMD to the appropriate official of the Federal agency(ies) describing the procurement requirements and requesting notification of any available owned or leased space controlled by that agency that could

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<sup>1</sup> See SLAT definition in GSAM 570.102 Definitions

<sup>2</sup> In most cases the appropriate GSA official will be the GSA Portfolio Management Division Director or the GSA Real Estate Acquisition Director;

<sup>3</sup> 41 CFR § 102-73.20 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs? Yes, after considering the availability of GSA-controlled space and determining that no such space is available to meet its needs, Federal agencies must extend priority consideration to available space in buildings under the custody and control of the United States Postal Service (USPS) in fulfilling Federal agency space needs, as specified in the "Agreement Between General Services Administration and the United States Postal Service Covering Real and Personal Property Relationships and Associated Services," dated July 1985.

<sup>4</sup> GSA has informed NOAA that it does not check with other federal agencies to determine if they have space available to house requirements and does not expect NOAA to do so. If federal agencies have excess owned real property they are required to report such excess property to GSA for disposal.

meet those requirements. The Realty Specialist is responsible for documenting these efforts and results in the lease file.

- Major Capital Investments: For procurements where the total acquisition cost (including any lease payments, tenant improvements, constructions costs, and relocation costs) classifies the project as a major capital investment<sup>5</sup>, the transaction will be reviewed under NOAA's integrated capital investment planning process. A federally-owned/controlled versus lease analysis should be reviewed and approved by the Business Analysis and Investment Planning Staff (BAIPS). The Realty Specialist shall work with BAIPS to determine if it is more advantageous for the Government to pursue federally-owned/controlled alternative(s) or to pursue a new lease action. The results of the review shall be documented and approved by BAIPS, RPMD, and the requesting office and documented in accordance with BAIPS major capital investment procedures.
- High Profile Actions: For procurements where the total acquisition cost<sup>1</sup> does not classify the project as a major capital investment, the Realty Specialist shall review the scope of the project to determine: if it could potentially result in the relocation of a significant number of NOAA personnel outside of the area where the current NOAA site is located; could potentially involve the relocation of significant NOAA assets (such as ships, large equipment); and/or, is likely to be politically sensitive. If any of the above conditions exist, the RPMD Director shall be consulted to determine if a cost/benefit or other analysis should be completed. If the action is a high-profile action, the procedures above (for contacting GSA and other Federal agencies) for acquisitions above the SLAT should be used regardless of the total acquisition cost and annual estimated rent.
- NOAA Other than Full and Open Competition: For Other than Full and Open Competition Sole Source procurements where only one source is determined to meet the requirements, the Realty Specialist shall ensure that the lease file includes documentation of consideration of federally owned and leased facilities or documentation that it was determined that no such facilities exist that are in the delineated area and/or meet the requirements. The requirements outlined above apply based on the relevant estimated annual rent and total acquisition cost. The Realty Specialist shall also describe these efforts in the Justification for Other than Full and Open Competition (OTFO), Section 5, "Description of Efforts to Solicit as Many Sources as is Practicable."
- GSA Procurements: For transactions where GSA will be the procuring agency, prior to engaging GSA, the Realty Specialist shall determine if the procurement is classified as a major capital investment or high profile action and follow the procedures above. If the action is not a major capital investment or high profile action, as a best practice, for non-office space procurements (for example, piers, laboratories), the NOAA Realty Specialist shall make good faith efforts to determine if other Federal agencies may have relevant property within the delineated area and shall follow the procedures outlined in this Bulletin for NOAA procurements to identify whether such space exists. It is preferable that letters, if any, be sent to other Federal agencies, prior to GSA initiating its procurement action. As the agency executing the procurement action, GSA is ultimately responsible for verifying that there are no federally-owned or controlled properties that could meet the requirements.

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<sup>5</sup> The major capital investment criteria will be formalized by BAIPS in a forthcoming NAO on Facility Capital Investment Planning and Management.

## Documentation and Decision-making Process

The NOAA lease file shall include documentation clearly stating that the DOC/NOAA real property inventory has been checked, and reflecting the results of that action. In turn, if no property meeting the space requirements is found in the DOC/NOAA real property inventory, NOAA lease file shall include the letter to GSA, if required above, requesting information on federally-owned or leased space and the GSA written response to the request.

If GSA or another Federal agency indicates that federally-owned or leased space is available the Realty Specialist shall:

- Obtain information regarding the requesting office's requirements and the federally-owned or controlled (i.e. federally-leased or otherwise controlled) space's ability to meet those requirements. RPMD may also need to obtain information on the availability and cost of a lease if required for a complete analysis of alternatives.
- The Realty Specialist shall provide the information on the federally-owned or leased space to the requesting office. The Realty Specialist shall work with the requesting office to determine if the offered space can meet the NOAA requirements taking into account economic, legal, environmental, timing/schedule, and any other relevant considerations<sup>6</sup>. If it is determined that the space cannot meet the requirements, the lease file should contain a memo to the file, approved by the appropriate requesting office senior official as well as the RPMD Region Chief or RPMD Director documenting this determination. If the acquisition is a high-profile action or a major capital investment then additional approvals may be required by the major capital investment review process.
- If the space appears to be able to meet the NOAA requirements, the Region Chief, working with the Director of BAIPS, as necessary, shall determine if an owned/federally-controlled v. lease analysis should be completed. Such an analysis may not be needed if it is clear that the space would require minimal investment (i.e. standard tenant improvements (which GSA is willing to amortize), minimal adjustment to the property). In this case, NOAA shall pursue utilization of that space. If GSA or another Federal agency indicates that federally-owned space is available but significant additional investment would be required (for example, construction costs, up-front tenant improvements) then the Realty Specialist shall work with BAIPS to determine if it is more beneficial (in terms of cost and schedule) for the Government to pursue the federally-owned or leased alternative or to pursue a new lease action<sup>6</sup>. A final determination should be drafted and approved by the appropriate requesting office senior official as well as the RPMD Region Chief or RPMD Director documenting this determination. If the acquisition is a high-profile action or a major capital investment, additional approvals may be required by the major capital investment review process.

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<sup>6</sup> This review shall be consistent with 41 CFR 102-73.45

Regions should review upcoming lease expirations and work with line offices on upcoming needs as far in advance of space delivery dates as possible in order to permit consideration of federally-owned space including construction options for such space.<sup>7</sup>

**References**

41 CFR 102-73

GSA Leasing Desk Guide, Chapter 1, Section 1

Executive Order 13327, February 4, 2004, Federal Real Property Asset Management

Attachment:

Sample letter to GSA requesting availability of Federal Space

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<sup>7</sup> Except for Sanctuaries, NOAA does not have statutory authority to purchase land; however, a no-cost transfer from another federal agency to NOAA could be possible if a federal agency owns land that is no longer requires for its mission.